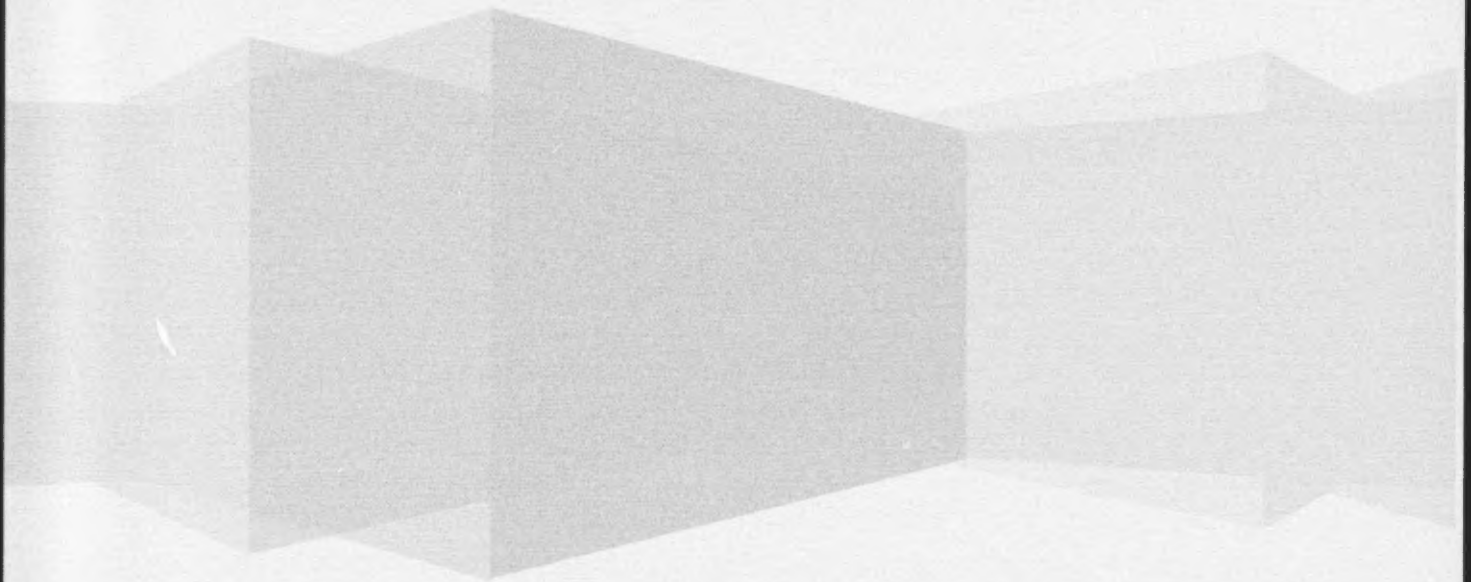




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# **Financial Services Tribunal 2010-2011 Annual Report**





May 31, 2011

The Honourable Kevin Falcon  
Minister of Finance  
Room 153, Parliament Buildings  
Victoria BC V8V 1X4

Dear Minister Falcon:

**Re: Financial Services Tribunal 2010-2011 Annual Report**

I am pleased to submit to you the Annual Report of the Financial Services Tribunal ("FST") for the fiscal year beginning April 1, 2010 and ending March 31, 2011. This report is submitted pursuant to section 242.1 (5) (d) of the *Financial Institutions Act*.

Sincerely,

Maurice R. Mourton  
Chair  
Financial Services Tribunal

Enclosure

## *Message from the Chair*

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While a short Annual Report, the Financial Services Tribunal continues to provide an important outlet of appeal, for those parties that remain dissatisfied with decisions made by the entities for which we have a responsibility.

My two colleagues and I who are the members of the Tribunal are new to our respective positions, and look forward to providing appropriate review when required in the ensuing year.

I would be pleased to respond to any questions the reader may have of this report.

Maurice R. Mourtou  
Chair

## *Mandate*

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The Financial Services Tribunal ("FST") hears appeals from institutions and individuals who want to contest enforcement decisions made by the:

- Insurance Council of British Columbia;
- Real Estate Council of British Columbia;
- Superintendent of Real Estate;
- Superintendent of Pensions;
- Registrar of Mortgage Brokers; and,
- Superintendent of Financial Institutions.

The FST has jurisdiction to hear appeals under the following British Columbia statutes:

- Financial Institutions Act;
- Credit Union Incorporation Act;
- Mortgage Brokers Act;
- Pension Benefits Standards Act;
- Real Estate Services Act; and,
- Real Estate Development Marketing Act.

## ***Tribunal Membership***

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At the start of this reporting period the FST board membership consisted of:

- William G. Hopkins, Chair (term expired November 23, 2010)
- Helen Ray del Val (term expired October 31, 2010)
- Stanley W. Hamilton (term expired May 31, 2010)

Effective November 23, 2010 a new Chair and one member were appointed by Order of the Lieutenant Governor in Council of British Columbia, which constitutes the tribunal membership at the end of the reporting period as follows:

### **MAURICE M. MOURTON, CHAIR**

Maurice has over 45 years experience in the banking industry and held a variety of senior executive positions. He was head of Human Resources for the Bank of Montreal and subsequently held senior positions in Quebec, Ontario, U.K., and British Columbia. Joining the HSBC Group in 1986, he served in a variety of senior executive positions including being a member of the Executive Committee. He retired from the HSBC Group in 2000 as Executive Director Brasil. From 2004 to 2007 he served as Chair of the Ubiquity Bank of Canada.

Always active in the community he has served on numerous boards. He has chaired the Children's Miracle Network Telethon, the Children and Women's Health Center of BC, the Canadian International Dragon Boat Festival, the Canadian Bankers Association of BC, the Canadian Genetic Diseases Network (a National Center of Excellence), the Arthritis Society of BC, the BC Transplant Society and the Child and Family Research Institute. In addition he has been a director of the International Finance Center, Endeavor, the Vancouver Opera, the BC Children's Hospital Foundation, the Vancouver Foundation, the College of Physicians and Surgeons of BC and Community Living B.C.

Currently he is a director of the Northern Trust Company, and a member of the Health Professions Review Board. He is a Governor of B.C. Children's Hospital Foundation.

### **PAULA BARNSLEY, MEMBER**

Paula Barnsley retired from full time private practice of law in July 2006, but continues her association with Cundari Seibel Law Corporation in Kamloops on a part time basis. She has been a part time member of various adjudicative tribunals since moving to Kamloops in 1998 and maintains a keen interest in administrative law, which when she clerked for the Supreme Court of Nova Scotia – Trial Division. She holds a Bachelor of Laws from Dalhousie University, and a Master of Laws from UBC. Her graduate work focussed on equality in tax policy. She has been called to the Bar in Nova Scotia, New Brunswick and British Columbia. She also holds a Masters of Education (Educational Psychology) from Memorial University in Newfoundland, and worked in private practice as a registered psychologist for 14 years before entering law school in 1988.

**PATRICK F. LEWIS**

One additional member, Patrick F. Lewis, was appointed by the Chair under section 6 of the *Administrative Tribunals Act* for a temporary period in order to ensure that a number of matters that were before the tribunal simultaneously could be dealt with promptly. Mr. Lewis is a partner with Sugden, McFee & Roos LLP, a highly regarded litigation boutique law firm in Vancouver BC.

## *Operations*

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Effective April 1, 2010, the administrative support functions of the FST were moved from the Financial Institutions Commission (FICOM) in Vancouver and consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office ("Appeals Office") in Victoria.

In addition to the FST, the Appeals Office provides administrative support to five other tribunals. This has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operation costs. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Health Professions Review Board;
- Hospital Appeal Board;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the FST through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies.

## ***Contact Information***

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**MAILING ADDRESS:** Financial Services Tribunal  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

**LOCATION:** 4<sup>th</sup> Floor, 747 Fort Street  
Victoria BC V8W 3E9

**TELEPHONE:** 250 387-3464

**FAX:** 250 356-9923

**EMAIL:** [FinancialServicesTribunal@gov.bc.ca](mailto:FinancialServicesTribunal@gov.bc.ca)

**WEBSITE:** <http://www.fst.gov.bc.ca/>

## *Appeal Activity and Decisions Issued*

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### APPEALS FILED

There were two new appeals filed with the FST between April 1, 2010 and March 31, 2011. One other matter was remitted back to the FST in that period for reconsideration after judicial review from a decision issued by the FST in 2009.

### DECISIONS ISSUED

Final decisions on the merits of each case were issued on both appeals filed in 2010:

#### *2010-RSA-001*

Decision Date:	February 17, 2011
Appellant:	Vikram Singh Atwal
Respondent:	Real Estate Council of BC
Act:	Real Estate Services Act, S.B.C. 2004, c. 42
Issue:	Refusal to issue a licence for the provision of real estate services
Disposition:	Dismissed
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2010-RSA-001(a).pdf">http://www.fst.gov.bc.ca/pdf/2010-RSA-001(a).pdf</a>

#### *2010-PBA-001*

Decision Date:	December 10, 2010
Appellant:	Brewers' Distributor Ltd.
Respondent(s):	Superintendent of Pensions Brewery, Winery and Distillery Workers, Local 300
Act:	Pension Benefits Standards Act, RSBC 1996, c. 352
Issue:	Whether a pension plan was administered in accordance with the Act and if not, what is the appropriate remedy?
Disposition:	Dismissed
Preliminary Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2010pba001_interim.pdf">http://www.fst.gov.bc.ca/pdf/2010pba001_interim.pdf</a>
Appeal Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2010pba001_decision.pdf">http://www.fst.gov.bc.ca/pdf/2010pba001_decision.pdf</a>
Supplementary Decision:	<a href="http://www.fst.gov.bc.ca/pdf/2010-PBA-001(c).pdf">http://www.fst.gov.bc.ca/pdf/2010-PBA-001(c).pdf</a>

## DECISIONS ISSUED – CONTINUED

Both appeals were conducted by way of written submissions and were concluded in less than seven months from the date the notice of appeal was filed.

In addition one preliminary decision on an application to permit oral submissions was determined (denied) and one supplementary costs decision was issued (costs awarded against the appellant) in file 2010-PBA-001.

Details of the appeals and a copy of the decisions rendered in each case can be found on the FST website on the Active Appeals and Decisions page at: <http://www.fst.gov.bc.ca/>

***Matters Outstanding at end  
of Period***

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There is one open matter currently before the FST (2008-MBA-040 - Registrar of Mortgage Brokers) which was remitted back to the FST for reconsideration on judicial review by the Supreme Court of British Columbia. That matter is currently under adjournment pending the outcome of an appeal to the Court of Appeal of British Columbia on the decision of the Supreme Court remitting it back to the FST.

## *Judicial Review of FST Decisions*

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One decision of the Supreme Court of British Columbia on judicial review of a September 2009 FST decision was rendered in this period, remitting the matter back to the FST for reconsideration. The Supreme Court's decision on judicial review has been appealed to the Court of Appeal and the appeal is pending before the Court.

An application for judicial review to the Supreme Court of British Columbia was made regarding one appeal (2010-PBA-001- Superintendent of Pensions) filed and decided by the FST in this reporting period. That matter is pending before the Court.

## ***Statement of Financial Performance***

*(For the fiscal year ended March 31, 2011)*

In fiscal year 2010/2011, the FST received \$1,700 in recoveries from appeal filing fees and incurred expenses of \$ 29,371 as detailed below in this three year chart.

<b><i>Operating Result</i></b>	<b><i>2008/2009</i></b> \$	<b><i>2009/2010</i></b> \$	<b><i>2010/2011</i></b> \$
Recoveries	2,550	0	1,700
Expenses	(93,902)	(58,698)	(29,371)
Net	(91,352)	(58,698)	(27,671)

<b><i>Direct Expenses</i></b>	<b><i>2008/2009</i></b> \$	<b><i>2009/2010</i></b> \$	<b><i>2010/2011</i></b> \$
Salaries and Benefits	45,026	(421)	0
Professional Services	6,266	1,240	11,130
Board Fees & Expenses	6,949	19,025	18,241
Other	273	283	0
Total direct Expenses	58,514	20,127	29,371
Allocated Overhead from FICOM	35,388	38,571	n/a
<b><i>Total FST Expenses</i></b>	<b><i>\$ 93,902</i></b>	<b><i>\$ 58,698</i></b>	<b><i>\$ 29,371</i></b>